

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

IMPERIAL PRODUCE, INC.

Employer

and

TEAMSTERS LOCAL 96, A/W INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

Case 5-RC-15157

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{1/}
3. The Petitioner involved claims to represent certain employees of the Employer.^{2/}
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:^{3/}

All full-time and regular part-time employees, including drivers, CSR/drivers, forklift operator, order pullers, part-time day warehouse employee, pullers, quality control employee, receiver, router, split technicians, wrapper and yard jockey employed by the Employer at its Washington, D.C. facility, excluding, office clerical employees (consisting of the cashier, office manager/human resource person and accounts payable), custodian, buyers, employees in the value added department, customer service representatives, district sales representative, sales manager, day customer service representative supervisor, night customer service supervisor, transportation supervisor/hot seat person, night supervisor, executive assistant/assistant general manager, the president, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the

payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by

TEAMSTERS LOCAL 96, A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **April 3, 2001**.

Dated March 20, 2001

at Baltimore, Maryland

Acting Regional Director, Region 5



1/ Imperial Produce, Inc. (the Employer), a Delaware corporation with an office and place of business in Washington, D.C., is engaged in the business of the wholesale sale and distribution of produce. During the past 12 months, a representative period, the Employer, in the course and conduct of its business operations described above, purchased and received at its District of Columbia location goods valued in excess of \$50,000 directly from points outside the District of Columbia. The parties stipulated that the Employer is engaged in commerce within the meaning of the Act.

2/ The parties stipulated that the Petitioner, Teamsters Local 96, affiliated with the International Brotherhood of Teamsters, AFL-CIO, (the Union or the Petitioner) is a labor organization within the meaning of Section 2(5) of the Act.

3/ At the hearing, the Petitioner amended its petition and seeks to represent the following unit:

All full-time and regular part-time drivers employed by the Employer, excluding all other employees, including guards, supervisors, clericals and professionals as defined by the Act.

There are approximately 23 employees in the petitioned-for unit and there is no history of collective bargaining between the Petitioner and the Employer.

The parties stipulated that the following job classifications should be excluded from any unit found appropriate: president, office clerical employees consisting of the cashier, office manager/human resource person and accounts payable, sales manager, day customer service representative supervisor, night customer service supervisor, transportation supervisor/hot seat person, buyers, night supervisor, executive assistant/assistant general manager, employees in the value added department, district sales representative, customer service representative and custodian.

POSITIONS OF THE PARTIES¹

The Union

The Union's position is that a stand-alone unit of drivers is an appropriate bargaining unit and, accordingly, the warehouse employees should be excluded. The Union further contends that there is not such an overwhelming community of interest with other employees to make the drivers-only unit inappropriate.

¹ The undersigned places no reliance on certain statements made by the Hearing Officer regarding the factors to be considered in determining an appropriate unit.

The Employer

The Employer contends that the only appropriate unit, consisting of approximately 42 employees, includes drivers, CSR (customer service representative)/drivers, forklift operators, order pullers, part-time day warehouse persons, pullers, quality control, receivers, routers, split technicians, wrappers and yard jockeys. The Employer contends that the unit should encompass both the drivers and the warehouse employees, as they have an overwhelming community of interest.

The Employer presented as its witnesses James Campbell (J. Campbell), executive assistant/assistant general manager and Vicki Rodgers, vice-president of human resources of Fresh Point. The Employer is a wholly owned subsidiary of Fresh Point. Neither party contends that Fresh Point is the employer of the petitioned-for unit. Rather, it is clear the Employer has sufficient control over the wages, hours and terms and conditions of employment and is the sole employer of the employees in the petitioned-for unit. The Petitioner presented as its witnesses Joseph Lewis, Benjamin Brown and Sergio Ramos, drivers who have been employed by the Employer for four years, five years and two years, respectively.

THE EMPLOYER'S OPERATION

The Employer is a specialty commodities company that deals in the distribution of perishable fruits and vegetables. The Employer secures a customer base and procures its product from across the country. The product is brought to the Employer's warehouse for storage, and then it is shipped out to customers for next day delivery. The goods are received and shipped from the loading dock area at the Employer's facility. Once the product is received, it is "staged" in the front of the warehouse. "Staging" refers to a process that begins when the product is received. The first part of staging is counting the product and checking the temperature. The second phase of staging is putting the product in cooler boxes and into slots for rotation. The third phase of staging is removing the product from the slots, bringing it back to the front of the warehouse and placing it on a truck for delivery. The fourth phase of staging is delivering the product.

The Employer makes first and second runs daily. The driver of a first run is called for his route the night before while the driver of a second run is called the same day. First runs start between 4:30 a.m. and 6:00 a.m. and occur from approximately 5:00 a.m. to 11:00 a.m. A second run is usually begun about 11:00 a.m., although a second run could be at any point in a day. The first run is usually a larger order and is set up well in advance; the second run is usually to fill in an incomplete order, an order on short notice or a late delivery.

The parties stipulated that the Employer's witness, J. Campbell, has supervisory authority over both the drivers and the warehousemen. J. Campbell testified that Melvin Campbell (M. Campbell), transportation supervisor/hot seat person, supervises both the drivers and the day warehouse employees. J. Campbell completes payroll change forms, performance evaluations and constructive advice reports for both drivers and warehouse employees. J. Campbell further testified that M. Campbell does not have the authority to hire, fire, or discipline employees for major infractions, especially those with the possibility of suspension or termination, without first consulting him. M. Campbell does have the authority to discipline employees for minor

infractions and give verbal warnings. M. Campbell has the authority to approve time off for warehouse employees and drivers, and can approve overtime, although he must consult with J. Campbell. I find, in light of the evidence here and the parties' agreement, that Melvin Campbell is a supervisor within the meaning of Section 2(11) of the Act and is excluded from the unit found appropriate herein.

The Employer has a fleet of trucks that include one 12-foot truck, twelve 20-foot trucks, four 16-foot trucks and one cargo van. In order to drive a truck, an employee needs DOT (Department of Transportation) certification. The Employer maintains a file containing the driver's DOT documents. The cargo van is used for making deliveries, picking up supplies for the warehouse and transporting salespeople to meet with customers. In order to operate the forklift or the pallet jack, an employee must receive certification. The Employer maintains training files containing employee sign-in sheets for training sessions on various warehouse machinery.

DELIVERY OF THE EMPLOYER'S PRODUCT

Products are delivered to the Employer's facility by common carriers, not the Employer's drivers. The Employer contends that drivers are involved in the unloading of these common carrier trucks, the loading of their own trucks and in returning product to stock. J. Campbell testified that the products are brought to the loading dock and the warehouse personnel, more specifically the receiver, quality control person, forklift driver, order pullers, and occasionally the drivers, unload the product from the common carrier trucks. The Employer's drivers, or any employees, are asked to unload the common carrier trucks if someone is out sick or the Employer is short-staffed. This occurs approximately three to four times per month. J. Campbell testified that the warehouse employees and drivers load the Employer's trucks together on a daily basis. The warehouse workers typically do not drive trucks unless the Employer has a shortage of drivers. On second runs, the drivers and warehouse employees load the product on the truck together, and if the delivery is large, one of the warehouse employees will get in the truck and ride with the driver to unload it. Drivers make second runs 50-60% of the time, although the number of second runs depends on the driver's DOT-regulated hours. Frequently, the CSR/drivers and the warehouse personnel have already taken care of the second runs by the time the drivers return from their first runs.

J. Campbell testified when the product is ready for delivery, the order pullers and the drivers place it on the truck. The pullers and drivers use pallet jacks, hand trucks or forklifts to load the product on the truck. Employees must be certified to operate the forklift or the pallet jacks and many of the employees are trained and licensed in their use. When drivers put the product back in stock, they use the same equipment, forklifts, pallet jacks and hand trucks, as the warehouse employees. When a driver returns goods to the warehouse for credit, there is a return sheet listing the product, credit slips, and pick-up slips that are completed by the driver. The credit slip ensures that customers receive credit for products that are damaged. The charge/credit slip book is given to the drivers, or the customer service representatives, when a customer has a problem or the product is being sold, and is used as a form of billing. The charge/credit slip is part of a driver's paperwork. The warehouse employees also handle these documents each day. When a driver returns a product to the warehouse, the driver signs the charge/credit slip, as does the warehouse employee, who checks the product back in. CSR/drivers, order pullers, pullers, the

quality control employee and the receiver have all signed the charge/credit slip of a returning driver.

Both warehouse employees and drivers participate in the loading of trucks. When a driver is notified that there is a short order or a split, the record testimony discloses that the driver often loads the order himself, using his hand truck. When making a delivery to a customer, the driver unloads the truck once arriving at the restaurant or other place of business. The drivers use their hand trucks to unload the product at a customer site. Brown testified that when making his first run, he spends approximately two hours driving and two hours unloading the product. Drivers pick up the LD 3, a large box containing product that has been flown in to the airport and is to be delivered. The warehouse employees occasionally go and pick up LD 3's from the airport and occasionally take them off the trucks. The warehouse employees unpack the LD 3 and store or ship them. The drivers load the LD 3 at least eight times per month. The drivers and warehouse employees perform the same functions in unloading the LD 3. They use a pallet jack or hand truck to unload the LD 3.

The Employer presented evidence of the payroll change of yard jockey Bartley from transportation/driver to night warehouse/checker and yard jockey and driver Isaac from day warehouse to transportation. J. Campbell testified about swing shift drivers and the amount of time they spend driving versus time in the warehouse. He presented un rebutted testimony that drivers Cromer and Valdez spend 75% of their time driving and 25% in the warehouse; drivers Lee and Vanegas spend 70% of their time driving and 30% in the warehouse; driver Isaac and yard jockey Bartley spend 50% of their time driving and 50% in the warehouse; and CSR/drivers Nickens and Womack spend 25% of their time driving and 75% in the warehouse. Of this group, five of these employees are classified as drivers and spend 25% or more of their time working in the warehouse. The remaining three perform driving and delivery functions, yet spend at least 50% of their time working in the warehouse.

The Union contends that drivers are not involved in loading and unloading their trucks. Lewis, who reports to the Employer's facility around 4:45 a.m. and leaves for his first run around 5:15 a.m., drives the Employer's largest truck. He usually returns to the facility around 2:00 or 2:30 p.m., at which time his workday ends unless there is overtime. Lewis testified that the night crew loads his truck, and he has not loaded or helped to load his truck during his employment. When he returns to the facility following his first run and if there are products to be removed from his truck, he removes the product with his hand truck, takes it to a special location, and a warehouse employee comes and checks the product. If there is a credit, the warehouse employee has to sign the form. Lewis removes pallets from his truck without assistance from the warehouse employees. Lewis is not certified to drive a forklift and has never seen a driver operating a forklift. The drivers are not allowed to operate hydraulic or electric jacks, and Lewis has been told by M. Campbell that drivers are not allowed to use the pallet jacks unless they have a special permit. Lewis was told this when he was using a jack to remove the pallets on his truck. At that time, he was not informed that he could be trained, if he chose, to operate the machinery. Lewis further testified that he has never had another employee go out on a delivery on his truck with him and has never seen a warehouse employee accompany a driver on a delivery during his employment.

Union witness Brown testified that he has seen drivers helping to load their trucks, if they are asked. If asked to assist with loading, the driver would be loading a small item, such as a split. Brown does not load produce on his truck unless he is asked to do so, which occurs about once or twice per month. If Brown is notified that he needs a split or short order loaded on his truck, he testified that he is not responsible for loading the order, but does so when asked. Brown further testified that he has never seen a driver operate a forklift, and the last time he saw a driver operating a jack was approximately two to three months ago when there was a rush. Brown testified that he has never had anyone from the warehouse ride with him in the truck to make deliveries. In addition, he has never seen a warehouse employee on a truck when it leaves the facility for a delivery. On a daily basis, Brown has not seen drivers performing duties other than driving a truck. Brown has seen, however, drivers asked to do other duties while they are waiting on an assignment. This occurs when there is a rush and happens about three time per month.

Ramos testified that he has never loaded his truck. His truck is loaded when he arrives at the warehouse in the morning, and his route usually takes him nine to ten hours to complete. When he returns to the facility, he unloads the empty pallets and takes any returns to the person in charge of returns in the warehouse and has his credit slips signed. Ramos testified that he has never seen a warehouse employee driving a truck and has never taken a warehouse employee on his truck for a delivery.

The Employer contends that its drivers work in the warehouse when they are not making deliveries in the Employer's trucks. J. Campbell testified that if a driver makes his first run and there is not a second run to be made, the driver can either work in the warehouse or go home at that point. Of the Employer's 19 routes, there are at least 7 drivers that spend at least 50% of their time back at the warehouse. There are 2 routes that take a full 8 hours for delivery. The remaining 10 routes fluctuate daily. Some drivers remain in the warehouse and pull orders or do "pick ups," where the product is purchased from another business when the Employer is short. J. Campbell testified that he makes sure that every employee gets 40 hours per week, and if a driver has less than 40 hours and informs him of this, the driver works in the warehouse to make up the difference. The driver can pull orders, clean or dump trash in the warehouse, the same tasks as the warehouse employees. In addition, the Employer contends that warehouse employees will make deliveries for or with drivers, as needed. Although Lewis and Ramos testified that they have never seen a warehouse employee driving a truck or making a delivery with a driver, it should be noted that Lewis usually returns from his deliveries around 2:00 p.m. and Ramos' route usually takes him nine to ten hours. In essence, both drivers leave the facility shortly after 5:00 a.m. and are away from the warehouse for most of the day. Brown testified that if there is not a second run, he leaves after only one-half day.

COMPENSATION, BENEFITS AND OTHER CONDITIONS OF EMPLOYMENT

The record establishes that J. Campbell and M. Campbell, who are located in the same facility with the drivers and warehouse employees, supervise the drivers and warehouse employees. J. Campbell completes payroll change forms, performance evaluations and constructive advice reports for both drivers and warehouse employees. The drivers and warehouse employees both work out of the same facility on the Employer's premises. The drivers and warehouse

employees report to the shipping office for their time cards at the start of their shift and both groups punch a time clock. They are both hourly paid, with the exception of the receiver who is a salaried employee. The wage rates of the drivers range from \$9.00 and \$12.50 per hour, and the wage rates of the warehouse employees range from \$8.00 to \$12.00. The part-time day warehouse employee is paid \$5.90 per hour. The CSR/drivers receive the same pay rate regardless of whether they are actually driving or not. All of the employees in the Employer's proposed unit are eligible for overtime pay. The Employer has a bonus system that is available to both drivers and warehouse employees.

The drivers and warehouse employees share the same parking location, lunchroom, break room and bathroom facilities. Both drivers and warehouse employees take a 30-minute lunch break, which is unpaid. The warehouse employees do not have a scheduled lunch break and either ask permission or take their lunch break when things are slow in the warehouse. The drivers return to the Employer's facility some of the time for the lunch break and sometimes they do not. The drivers do not return to the facility for lunch if they have not completed their first run. The drivers own their hand trucks, which they either purchase from the Employer or from an outside source. The warehouse employees do not own their hand trucks. There is no requirement that warehouse employees have a driver's license. Both groups of employees wear the same uniform.

The drivers and warehouse employees are evaluated using the same evaluation form. The performance of the drivers is evaluated on dependability, customer relations, and efficiency. In evaluating efficiency, the Employer considers the time involved in runs, mileage and the number of packages delivered. The warehouse employees are evaluated on the number of packages pulled and loaded on the truck. The bonuses for warehouse employees and drivers are calculated based on different factors. The warehouse employees' rate of pulling product is monitored and written on the black board every day. The driver's efficiency rates are also posted.

The drivers and warehouse employees have the same vacation, workers compensation coverage, life insurance, short-term disability, 401(k) plan, vision coverage and health insurance with the same options, prices and providers. Fresh Point administers the Employer's human resources policies, and the Fresh Point employee handbook applies to all employees, including drivers and warehouse employees. Part-time employees are excluded from the benefits set forth in the Employer's handbook.

JOB CLASSIFICATIONS

CSR/DRIVER

The two CSR/drivers handle telephone calls from customers, whether they are placing an order, making a complaint or noting an accounting issue. J. Campbell testified that CSR/driver Nickens has a mandatory route on Tuesdays and Thursdays, starting at 5:00 a.m., and begins work at 7:30 a.m. on the other days. He frequently makes second runs, attempting to fill incomplete orders. CSR/driver Womack works nights and days. He runs a route when the scheduled driver is off, and when he is to drive a truck he begins the workday at 5:00 a.m.. On Sundays he begins work at 3:00 p.m., and all other days he starts work between 7:00 and 8:00 a.m. The CSR/drivers are used for first runs in the event of a driver shortage. The CSR/drivers work in

the warehouse tagging, which includes going into the cooler box, bringing the order out, setting it on a pallet and putting a load tag on it indicating the account. The CSR/drivers drive the same type of truck as the drivers. J. Campbell testified that CSR/drivers Nickens and Womack are considered "swing shift" drivers, meaning drivers that have been with the Employer and can drive "any route . . . any shift, and just go anywhere." According to J. Campbell, CSR/drivers Nickens and Womack spend 25% of their time driving and 75% of their time in the warehouse.

The record testimony discloses that unlike drivers and warehouse employees, CSR/drivers Nickens and Womack do not wear uniforms or steel-toed boots. They are working in the sales office, sitting behind a desk and talking on the telephone. Since Nickens' classification changed from driver to CSR/driver, Brown has not seen him drive a truck in six or seven months. Nickens and Womack appear on both the driver's schedule and the CSR schedule, which is part of the sales schedule.

FORKLIFT OPERATOR

The forklift operator drives the forklift, puts away the product, unloads product off the truck, and checks in product from either the Employer's trucks or independent trucks. The forklift operator sees the drivers on a daily basis. When a driver returns goods that are damaged, spoiled or excess, the forklift operator checks the quality and checks the credit. He is responsible for ensuring that the product that is put away matches what is written on the credit form. There is no indication, based on the record evidence, that the forklift driver has the required DOT certification in order to qualify him to drive a truck and make deliveries. The record evidence does disclose, however, that the forklift operator has received the requisite training to operate a forklift and pallet jack.

ORDER PULLERS, PART-TIME DAY WAREHOUSE, QUALITY CONTROL

There are eight or nine order pullers, or pullers, who are responsible for pulling the product from the cooler boxes and checking the product for quality. The pullers also stock the product in the warehouse, load the trucks and sometimes help to unload product off the trucks. There is one part-time day warehouseman who does general warehouse work and cleans the warehouse. The one quality control employee pulls orders for shipping, checks the product for quality, checks in product that is returned to the warehouse with the warehouse employees and the drivers, dumps trash, and drives the forklift or pallet jack in the warehouse. Like the forklift driver, the quality control employee checks in returned goods and ensures that returned product matches what is written on the credit form.

RECEIVER

There is one receiver who is responsible for receiving the product that is coming to the Employer from independent contractors. The receiver makes the decision when a product arrives whether to keep it or send it back, based on its quality. The receiver puts the product away, pulls orders for shipping, unloads trucks, checks the product for quality and sweeps the floor in the warehouse.

ROUTER

There is one router, who routes the trucks and pulls orders in the warehouse. The router also “picks the tickets,” which is the second part of the order ticket system. Picking the tickets encompasses printing the labels that go on the product indicating the customer. These labels are given to the warehouse employees so they can identify the product and pull the order.

SPLIT TECHNICIANS, WRAPPER

There are two split technicians, who are responsible for packing the split boxes.² The split technicians break the cases of product for orders to be pulled and shipped on the truck. The split technicians differ from pullers in that they focus more on the splits. Out of an eight-hour day, the split technicians spend about two hours doing the splits. The remainder of their time is spent pulling orders, loading and unloading trucks and driving the pallet jack or the forklift. There is one wrapper who wraps pallets, which takes about four hours. The remainder of the shift is spent doing splits, pulling orders, and cleaning up the warehouse.

YARD JOCKEY

There is one yard jockey who is responsible for parking the trucks and lining them up when they come to the loading dock. Once the routes are set, the yard jockey backs the trucks up to the loading dock and while the trucks are parked at the loading dock, he pulls orders, loads trucks and makes deliveries. The yard jockey spends 50% of his time driving either in the yard or on the road. The record evidence reveals that the yard jockey does have the required DOT certification to drive a truck and make deliveries.

ANALYSIS AND CONCLUSIONS

Section 9(b) of the Act states the Board “shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof....” The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be “appropriate.” *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192, fn.1; *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf’d. 190 F.2d 576 (7th Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4th Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F.2d 478, 480 (10th Cir. 1962).

² If a full case is opened and the entire product is not removed, it is referred to as a split.

While the Act does not fix specific standards for making unit determinations, the Board has developed a number of criteria to use in representation cases. Foremost is the principle that mutuality of interest in wages, hours and working conditions is the prime determinant of whether a given group of employees constitutes an appropriate unit. *Continental Baking Company*, 99 NLRB 777, 782 (1952). The key is whether the employees have a sufficient community of interest to be an appropriate unit. *Tidewater Oil Co. v. NLRB*, 358 F.2d 363, 366 (2d Cir. 1964), cert. denied 380 U.S. 910 (1965). The Board stated in *Continental Baking*:

In deciding whether the requisite mutuality exists, the Board looks to such factors as the duties, skills, and working conditions of the employees involved, and especially to any existing bargaining history. *Id.* at 782-3.

The community of interest test also considers factors such as the degree of functional integration, *Atlanta Hilton Towers*, 273 NLRB 87 (1984); common supervision, *Associated Milk Producers*, 250 NLRB 1407 (1970); employee skills and functions, *Phoenician*, 308 NLRB 826 (1992); interchange and contact among employees, *Associated Milk Producers*, supra; and general working conditions and fringe benefits, *Allied Gear & Machine Co.*, 250 NLRB 679 (1950).

In asserting a unit of drivers is appropriate, the Union relies on *Overnite Transportation Company*, 331 NLRB No. 85 (2000). This case is distinguishable from facts in the instant case. In *Overnite*, the drivers performed separate functions and possessed special skills and qualifications. The drivers spent most of their time working away from the facility and did not have any interchange with the other employees in the unit. In the instant case, the record discloses that drivers begin their day at the facility and leave to make their runs, but many return and perform work in the warehouse when their delivery route is less than 8 hours. Of 19 routes, the hours of at least 10 routes fluctuate and those drivers regularly spend time in the warehouse pulling orders, cleaning the warehouse and picking up products purchased elsewhere. At least 5 of the drivers, Cromer, Isaac, Lee, Valdez and Vanegas, spend 25% or more of their time working in the warehouse.

The Employer relies on a line of cases, in which employees were functionally integrated and drivers spent time performing the same functions as other employees, had similar supervision, pay and benefits, and had similar conditions of employment as other employees. *Standard Oil Company*, 147 NLRB 1226 (1964). In the instant case, the record does not disclose that the drivers constitute a functionally distinct group whose duties and interests are different from other employees. The drivers and warehouse employees have similar supervision, wage rates, benefits, work location and uniforms. The drivers and warehouse employees both load and unload trucks, whether at the Employer's facility or the customer's premises. The record further discloses that at least some of the drivers spend time working in the warehouse pulling product and performing other warehouse duties. On occasion, warehouse employees drive trucks and make deliveries. Neither classification, driver or warehouse employee, requires specialized training, and drivers and warehouse employees have transferred from one department to the other.

Based on these factors, I find that a sufficient community of interest exists between the drivers and warehouse employees to warrant finding the overall unit appropriate. There are approximately 42 employees in the unit.

In summary, I find an appropriate unit to be:

All full-time and regular part-time employees, including drivers, CSR/drivers, forklift operator, order pullers, part-time day warehouse employee, pullers, quality control employee, receiver, router, split technicians, wrapper and yard jockey employed by the Employer at its Washington, D.C. facility, excluding, office clerical employees (consisting of the cashier, office manager/human resource person and accounts payable), custodian, buyers, employees in the value added department, customer service representatives, district sales representative, sales manager, day customer service representative supervisor, night customer service supervisor, transportation supervisor/hot seat person, night supervisor, executive assistant/assistant general manager, the president, guards and supervisors as defined by the Act.

At the hearing the Union stated its willingness to proceed to an election in any unit found appropriate. Since the unit that I find appropriate is broader than the petitioned for unit, the Union is granted fourteen (14) days from the date of this Decision to make an adequate showing of interest, if necessary. Should the Union not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.